

The Use of Ordinances in Michigan To Control Exposures to Contaminated Groundwater

Steve Cunningham,
Michigan Department of Environmental Quality
Cadillac District Office
cunnings@michigan.gov

Statutory Basis for Using Local Ordinances as an Exposure Control Mechanism

- Natural Resources and Environmental Protection Act, Act 451 of 1994 (NREPA)
- Part 201 Section 324.20120b(5)
- Part 213 Section 324.21310a(3)

Section 20b (5)

- “If the department determines that exposure to hazardous substances may be reliably restricted by an institutional control (IC) in lieu of a restrictive covenant, and that imposition of land use of resource use restrictions through restrictive covenants is impractical, the department may approve of a remedial action plan under section 20120a(1)(f) to (j) of (2) that relies on such institutional control. Mechanisms that may be considered....”

Key Elements of the Statute

- Use of an ordinance as an IC is only in the context of a RAP, IRDC or CAP.
- Use of Restrictive Covenants has been found to be impractical.
- The ordinance must be published and maintained in the same manner as a zoning ordinance
- It must contain a 30 day notice to the Dept. prior to modification, lapsing or revocation.
- The Dept. Must determine that the approach is reliable.

Elements that Ensure the Reliability of the Ordinance as an Effective exposure Control

- Purpose Statement- "To protect public health, safety and welfare...."
- Ordinance must technically "FIT" the exposure scenario:
 - alternate water must be available
 - restricted zone must horizontally and vertically cover the impact area
 - Wellhead Protection Zones
- Exceptions- they must not swallow the rule.
 - Existing wells, irrigations wells, heat pump wells, cooling water wells, fire protections wells, etc.
 - Data demands for exceptions

Continue.....

- Enforcement Provisions- person or dept. responsible....penalties
- Severability
- Notice to well permitting authority of ordinance existence
- Notice to land owners effected by restrictions

Commonly asked questions:

- Existing wells- What effort should be made to locate existing wells?
 - Well logs
 - Mailer or door-to-door survey
 - Billing records
- Existing Ordinances- If an ordinance already exists, can it always be utilized?
- When seeking restrictive covenants, What is impractical?

Steve Cunningham
Michigan Department of
Environmental Quality
Cadillac District Office
Ph. # 231-775-3960-ext 6305
cunnings@michigan.gov